Supreme Court, U.S.
FILED

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No. _____

In The

Supreme Court of the United States

JOHN MICHAEL SCHAEFER,

Petitioner,

v.

DEPARTMENT OF MOTOR VEHICLES
AND PUBLIC SAFETY, State of Nevada,
RICHARD T. KIRKLAND, Director,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Nevada

PETITION FOR A WRIT OF CERTIORARI

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Petitioner In Proper Person

QUESTION PRESENTED

Can State demand applicant for driver's licensing and/or registration disclose personal residence address, when applicant asserts rights of privacy and tenders non-residential current address?

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PETITION FOR A WRIT OF CERTIORARI

John Michael Schaefer respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of the State of Nevada in this case.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Nevada, labeled ORDER OF AFFIRMANCE, unreported. (App., *infra*, 1a-5a).

JURISDICTION

The Supreme Court of the State of Nevada entered its judgment/final order on December 8, 2000. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Nevada Revised Statutes (NRS) 483.290 and 482.215, in relevant part, mandate the disclosure of citizen's private residence address as part of application for licensing or registration:

NRS 483.290(1): "Every application for a drivers license must state the full name . . and residence address of applicant."

NRS 482.215(3): "Each application (for vehicle registration) must be made

> upon form furnished by the department and contain . . his residential address."

The court below justifies such requirement based on statutory limitations on disclosure of same; in relevant part:

> NRS 481.063(2): "The director may release personal information from a file or record relating to the driver's license, identification card or title or registration of a vehicle of a person if the requester submits a written release from the person who holds a lien on the vehicle, or an agent of that person, or the person about whom the information is requested which is dated not more than 90 days before the date of the request."

> NRS 481.063(5): "If a person provides description of information requested and its proposed use and signs affidavit to that effect, Director may release information from a record for use in connection with any civil, criminal, administrative proceeding including service of process."

Except as otherwise provided (subs. 2) the director may deny any use of the files and records if he reasonably believes that the information taken may be used for an unwarranted invasion of a particular person's privacy.

STATEMENT

Petitioner, a citizen of Nevada, in 1994 requested Respondent to issue him a Nevada drivers license and vehicle registration utilizing his non-residential address, a post office box, citing threats on his security, anonymously mailed, believed to be from his former spouse, a citizen of Russia who had for 12 years prior to petitioner's 1991 marriage of one year been mistress to the editor of the government's newspaper, Pravda, with access to substantial contacts. Petitioner and spouse had extensive civil litigation.

Respondent refused, the matter was filed in the United States District Court. August 28, 1995 (Case No. CV-9-95-826 LDG (LRL)), dismissed for failure to exhaust administrative remedies. Petitioner then sought relief administratively in separate hearings for license, and for registration, with a nonresidential address, and was refused. The matter was then filed in the state court (District Court, Eighth Judicial District) on November 3, 1997, with cross-motions for summary judgment being heard, Respondent's motion granted in Second Amended Order filed August 28, 1998. (App., *infra*, 5a-11a). Said Order affirmed by the Supreme Court of the State of Nevada on December 8, 2000 per Order filed.

REASONS FOR GRANTING THE PETITION

There have been conflicts between appellate decisions and between legislative policies as to the respect to be given one's personal residential address. This issue is of great moment to celebrities, to Judges, to police officers, to stalked women, to targeted children, to mafia, to financial deadbeats; the law must protect both the best and worst of its citizens.

In *Barenblatt v. United States*, 360 U.S. 109, 79 S.Ct. 1081 (1959), this Court gave great deference to legislative justifications based on national security; the Supreme Court of Nevada gives similar deference to law enforcement agencies (page 3 of its Order). But this Court held that before a state legislature could compel personal information it had to "convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest" in *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539, 83 S. Ct. 889 (1963). How important is the government's need-to-know when balanced with fact that a driver's license or vehicle registration has been a necessity of life, like food and lodging, and many people would be prejudiced if their personal home address were available to the public.

The legislative response is to say "no problem we'll just limit public access." The Nevada statute attempting this places a great burden on Respondent, who can deny access "if he reasonably believes that information may be used for an unwarranted invasion of privacy." Did the fan of the Los Angeles actress murdered at her home, the address having been disclosed by the Department of

Motor Vehicles, truthfully disclose why he wanted it? Cannot anyone seeking the address of any target simply file a small claims case for some imaginary wrong and be provided the address for purposes of process-service? Can state employees be trusted not to disclose addresses to friends, or not be bought-off by a father seeking to seize his child from a custodial mother? Isn't the real answer simply not to require this information be on any public data-base, if a non-residential current address can be provided? Isn't government's need-to-know limited to mailing of notices, renewals, parking tickets? Have American's state driver and vehicle agencies become arms of the police? Do the ends justify the means?

Columnist Alan Charles Raul recently suggested that "polls say privacy is on everyone's mind," and that privacy is "the civil right of the decade."

The right of privacy is not absolute, and may yield to the furtherance of a strong competing need for disclosure. *Scharf v. Regents of UC*, 234 CA 3d 1393, 286 Cal. Rptr. 227 (1991). Do the thugs who have stormed criminal trial courts, and in some cases murdered a sitting Judge, know that the Judge's residence is on a government database that is available if the right approach is made?

A person's interest is maintaining privacy or his or her papers is of sufficient importance to merit constitutional protection. *Church of Scientology v. United States*, 506 U.S. 9, 121 L. Ed. 2d 313 (1992). Isn't one's private family residence entitled to a more elevated priority than one's "papers?" Privacy of one's home is accorded special consideration in the Federal Constitution. *U.S. Dept. of*

Defense v. FLRA, 510 U.S. 487, 127 L. Ed. 2d 325 (1994). Justice Thomas (at page 500) stating:

> "A very slight privacy interest would suffice to outweigh the relevant public interest; we need not be exact in our quantification of the privacy interest. It is enough to observe that the interest in nondisclosure is not insubstantial."

The remedy is not to pray that the statutes and case law work efficiently, but to give the citizen the option of utilizing a non-residential address, as many, many people do, being forced to falsely sign under penalty of perjury on state applications.

California Government Code sec. 6254.4 bars release of home addresses of designated persons, including judges, district attorneys, public defenders, police officers, and their assistants and deputies, active or retired. Is not the residential security of all non-designated persons worth of this Court's evaluation?

Nevada Revised Statute 481.063(5), and probably similar legislation throughout America, destroys the good intentions of limiting disclosure.

> "If a person provides description of information requested and its proposed use and signs affidavit to that effect, Director may release information from a record for use in connection with any civil, criminal, administrative proceeding including service of process."

The "right of privacy" may be defined as simply the right of an individual to be let alone. *Garner v. Triangle Publications*, 97 F. Supp. 546, 548 (D.C.N.Y. 1951). The right of personal privacy is one aspect of the 'liberty' protected by the due process clause of the Fourteenth

Amendment. *Carey v. Population Services, Intl.*, 431 U.S. 678, 52 L. Ed. 2d 675 (1977) (privacy of one's home at issue here). The Fifth Amendment protects our privacy too, the privilege against self-incrimination reflects right of each individual to private enclave where he may live a private life. *Bellis v. United States*, 417 U.S. 85, 40 L. Ed. 2d 678 (1974).

Statutes of course are presumed constitutional, but it is not presumed that officials will enforce same in such a manner as will deny constitutional protections to persons subject to regulation, or that power under the statute will be improvidently exercised. *Yakus v. United States*, 321 U.S. 414, 64 S. Ct. 660 (1944). Society does not learn that residential information was improvidently released, until there is an incident. The Courts simply have to make it clear that citizens have the option to provide a contact-address that is not one's personal home.

CONCLUSION

The issue is this case affects every motorist in America. We are all exposed to error and mischief. The Nevada Supreme Court evaluated the federal constitutional issue. The decision below is erroneous, and should be evaluated here.

Respectfully submitted,

J. MICHAEL SCHAEFER
Petitioner in Proper Person

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN MICHAEL SCHAEFER, Appellant, vs. DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY, DONALD L. DENISON, DIRECTOR, Respondent.	No. 33038

ORDER OF AFFIRMANCE

(Filed Dec. 8, 2000)

This is an appeal from an order of the district court dismissing appellant's complaint for declaratory relief.

Appellant John Michael Schaefer sought a judicial declaration that the department of Motor Vehicles' (DMV) general requirement that all driver's license and vehicle registration applicants reveal their residential addresses violates his constitutional rights of privacy. On August 28, 1998, the district court granted the DMV's motion for summary judgment. This appeal followed.

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and

that the moving party is entitled to a judgment as a matter of law." NRCP Rule 56(c). "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party." Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). This court reviews summary judgment orders do novo. *See* Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

Schaefer contends that possible inappropriate use of residential addresses compiled by the DMV under NRS 483.290 and NRS 482.215 violates his privacy interests under the Fourteenth Amendment of the United States Constitution. We disagree.

"Statutes are presumed to be valid, and the burden is on the challenger to make a clear showing of their unconstitutionality." Childs v. State, 107 Nev. 584, 587, 816 P.2d 1079, 1081 (1991) (citing Sheriff v. Martin, 99 Nev. 336, 662 P.2d 634 (1983)). To overcome the presumption, there must be "a 'clear showing' of invalidity." *Sheriff*, 99 Nev. at 340, 662 P.2d at 637.

The United States Supreme Court has indicated that the citizens of the United States, as a general matter, have a constitutionally protected privacy interest in avoiding the disclosure of personal matters. *See* Whalen v. Roe, 429 U.S. 589, 599-600 (1977). However, under *Whalen* there is no threat to privacy implicit in the accumulation of such personal information as residential addresses. *Id.* at 592, 605.

Schaefer cites no authority to support his contention that the statutes in question here infringe upon a constitutionally protected privacy interest. Heretofore, this

court has not recognized a fundamental right to the privacy of one's residential address. We conclude that Schaefer has failed to make a clear showing that NRS 482.215 and NRS 483.290 infringe upon a constitutionally protected privacy interest.

Assuming, however, that NRS 482.215 and NRS 483.290 infringe on a fundamental right to privacy, the statutes are constitutional. Legislation may limit an individual's privacy rights if it is necessary to advance a compelling state interest and is narrowly tailored. *See* Roe v. Wade, 410 U.S. 113 (1973); Gaines v. State, 116 Nev. ___, 998 P.2d 166 (2000).

We conclude that the state, in the case at hand, has a compelling interest in obtaining and maintaining accurate and reliable residence information from its driver's license and vehicle registration applicants. This interest outweighs the slight chance that an individual's residence address will be improperly released. Furthermore, NRS 481.063[1] limits the unwarranted disclosure of an applicant's personal information. Therefore, the statutory

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[1] NRS 481.063 provides, in relevant part:

> (2) The director may release personal information from a file or record relating to the driver's license, identification card or title or registration of a vehicle of a person if the requester submits a written release from the person who holds a lien on the vehicle, or an agent of that person, or the person about whom the information is requested which is dated not more than 90 days before the date of the request. The written release must be in a form required by the director.
>
> . . . .
>
> (7) Except as otherwise provided in subsection 2, the director may deny any use of the files and

limits of NRS 481.063 further minimize the likelihood of the improper release of an applicant's personal information.

NRS 483.290 and NRS 482.215 require the disclosure of an applicant's residence address, which is necessary for the state to maintain accurate and reliable information on its driver's license and vehicle registration applicants. This information is gathered not just for the purpose of mailing notices to individuals. Law enforcement agencies, for example, utilize the information to contact next of kin. The statutes do not allow the unwarranted disclosure of an applicant's personal information to third parties. Thus, we conclude that NRS 483.290 and NRS 482.215 are constitutional in that they advance a compelling state interest and are narrowly tailored to that interest.

Having fully reviewed the briefs and the record, we conclude that Schaefer makes no contentions that entitle him to relief. Accordingly, we affirm the order of the district court.

It is so ORDERED.

/s/ Young, J.
Young

/s/ Maupin, J.
Maupin

/s/ Becker, J.
Becker

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records if he reasonably believes that the information taken may be used for an unwarranted invasion of a particular person's privacy.

cc: Hon. Sally L. Loehrer, District Judge
Attorney General
J. Michael Schaefer
Clark County Clerk

APPENDIX B

ORD
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DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN MICHAEL SCHAEFER,

Plaintiff

vs.

DONALD L. DENISON,
Director Department of Motor
Vehicles and Public Safety,

Defendant.

_____/

Case No. A380688
Dept. No. XV
Docket No. L

SECOND AMENDED ORDER

(FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION)

(Filed Aug. 28, 1998)

THIS MATTER came before this Court on March 2, 1998, without a hearing, pursuant to Plaintiff's Motion for Summary Judgment and Defendant's Opposition to

Motion for Summary Judgment/Counter-Motion for Summary Judgment, the Plaintiff *pro se*, and the Defendant being represented by and through MARIAH L. SUGDEN, Chief Counsel, Department of Motor Vehicles and Public Safety, this Court, having considered the pleadings and documents on file herein, does hereby make the following Findings of Fact, Conclusions of Law, and Decision.

FINDINGS OF FACT

This Court has jurisdiction pursuant to NRS 41.031(2).

On November 3, 1998, Plaintiff ("Schaefer") filed the Complaint for Declaratory Relief, seeking this Court's ruling that two statutory provisions, specifically NRS 482.215(3)(6) and 483.290(1)(d), requiring the disclosure of one's physical address when making application for vehicle registration and a driver's license, respectively, are unconstitutional insofar as such intrusions by the State violate one's right to privacy.

Schaefer, while conceding that the issue regarding the vehicle registration is moot, as Schaefer was apparently issued vehicle registration by providing a Post Office box address, nevertheless has requested this Court to rule on this issue in the interest of uniformity and consistency.

On January 27, 1998, Schaefer sought a ruling on summary judgment that those portions of NRS 482.215(13) and 483.290(1)(d), requiring disclosure of a

residence address, be declared unconstitutional as violative of one's First, Fifth, Ninth and Fourteenth Amendments.

On February 10, 1998, the Department of Motor Vehicles and Public Safety filed its Opposition to Motion for Summary Judgment and Counter-Motion for Summary Judgment, seeking this Court's declaration that the subject statutory provisions are constitutionally valid.

Schaefer's Reply to Opposition of Defendant was filed shortly thereafter.

Any Conclusions of Law hereafter construed to constitute a Finding of Fact is hereby adopted as such to the same extent as if originally so denominated.

CONCLUSIONS OF LAW

NRCP Rule 56(c) states that summary judgment is appropriate:

> If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. The trial court's review of the record for issues of material fact, pleadings and documentary evidence should be construed in a posture which is most favorable to the party against whom the motion for summary judgment is directed. *Butler v. Bogdanovich*, 101 Nev. 449, 451, 705 P.2d 662, ___ (1985); *See also, Jones v. First Mortgage Co. of Nevada*, 112 Nev. Adv. Opn. 73 (April 30, 1996).

In the present case, at issue is whether or not two statutory provisions, specifically NRS 482.215(3)(b) and NRS 483.290(1)(d), are unconstitutional as they require disclosure to the DMV/PS of one's residence address. The gravamen of Schaefer's Complaint for Declaratory Relief is that such disclosure violates his right of privacy and, accordingly, Schaefer is entitled to summary judgment as a matter of law. This Court disagrees.

Statutes are presumed to be constitutionally valid. *See, SIIS v. Surman,* 103 Nev. 366, 741 P.2d 1357, ___ (1987). One attacking the validity of the statute bears the burden to overcome that presumption. *Id.* Moreover, our Supreme Court noted:

> Our analysis . . . begins with the presumption of constitutional validity which clothes statutes enacted by the Legislature. *Viale v. Foley,* 76 Nev. 149, 152, 350 P.2d 721 (1960). All acts passed by the Legislature are presumed to be valid until the contrary is clearly established. *Hard v. Depali, et al.,* 56 Nev. 19, 26, 41 P.2d 1054 (1935). In case of doubt, every possible presumption will be made in favor of the constitutionality of the statute, and the courts will interfere only when the Constitution is clearly violated. *City of Reno v. County of Washoe,* 94 Nev. 327, 333-334, 580 P.2d 460 (1978); *Mengelkamp v. List,* 99 Nev. 542, 545, 501 P.2d 1032 (1972); *State of Nevada v. Irwin,* 5 Nev. 111 (1869). Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional. *Ottenheimer v. Real Estate Division,* 97 Nev. 314, 315-316, 629 P.2d 1203 (1981); *Damus v. County of Clark,* 93 Nev. 512, 516, 569 P.2d 933 (1977);

> *Koscot Interplanetary, Inc. v. Draney*, 90 Nev. 450, 456, 530 P.2d 108 (1974).

List v. Whisler, 99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983). The court further elaborated in *City of Reno*:

> . . . It has been repeatedly said that the presumption is that every state statute, the objects and provision of which are among the acknowledged powers of legislation, is valid and constitutional, and such presumption is not to be overcome unless the contrary is clearly demonstrated.

City of Reno v. County of Washoe, 94 Nev. at 334.

Accordingly, we agree with DMV/PS that NRS 482.215(3)(b) and NRS 483.290(1)(d) are presumed to be constitutionally valid. Schaefer is not entitled to a favorable ruling absent a clear showing that these statutory provisions are invalid and unconstitutional.

Our Supreme Court has further held that " . . . statutes, if enacted in the exercise of police power, are presumed to promote the public welfare and they come to court with the presumption of validity." *Koscot Interplanetary Inc. v. Draney*, 90 Nev. 450, 456, 530 P.2d 108, ___ (1974). DMV/PS records are invariably relied upon by law enforcement and, accordingly, the accuracy of such information is paramount to public safety.

We note that Schaefer concedes that "where 'fundamental rights' such as right to privacy are involved, any state regulations limiting those rights must be justified only by a 'compelling state interest' and legislative enactments regulating such rights must be narrowly drawn so as to express only the legitimate state interests at stake.

Roe v. Wade, 410 U.S. 113, 5 L.Ed.2d 147." Here, the interest of the State (DMV/PS) in obtaining and maintaining accurate and reliable information necessarily outweighs the slight chance that Schaefer's physical residence address may be improperly released.

As noted by DMV/PS, the law provides for the protection of a person's privacy by conferring on the Director of DMV/PS discretion in releasing information contained in registration and drivers license records:

> Except as otherwise provided in subsection 2, the director may deny any use of the files and records if he reasonably believes that the information taken may be used for an unwarranted invasion of a *particular person's privacy*. NRS 481.063. (Emphasis added).

Also, NRS 481.063(5)(k)(3) precludes the release of personal information for the bulk distribution of surveys, marketing material or solicitations if the person about whom the information is requested prohibits such release. The legislature has chosen to safeguard and protect the privacy of those individuals who choose not to permit the release of personal information from records held by DMV/PS. There is no basis for Schaefer's contention that complying with the subject statutes will inevitably lead to an invasion of privacy.

Morever, to prevail in an action for declaratory relief, one must establish the following:

> (1) there must exist a justiciable controversy; that is to say, a controversy in which a claim of right is asserted against one who has an interest in contesting; (2) the controversy must be between persons whose interests are adverse;

> (3) the party seeking declaratory relief must have a legal interest in the controversy, that is to say, a legally protective interest; and (4) the issue involved in the controversy must be ripe for individual determination. *Knittle v. Progressive Casualty Ins. Co.*, 112 Nev. Adv. Opn. 2, 3-4 (January 4, 1996).

"Justiciable controversy" has been construed to be a "real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241, 57 S.Ct. 461, ___, 81 L.Ed.2d 617, ___ (1937). It is "distinguished from a difference or dispute or a hypothetical or abstract character, from one that is academic or moot." *Id.* at 240, 57 S.Ct. at ___, 81 L.Ed.2d at ___.

In *Doe v. Bryan*, 102 Nev. 523, 728 P.2d 443 (1986), the court noted that "a declaration is unavailable when damage is merely apprehended or feared." *Id.* at 525, 728 P.2d at ___. Assuming, *arguendo*, that the gist of Schaefer's Complaint is that in the event he were to provide to the DMV/PS his residence address, as required by NRS 482.215(3)(b) and 483.290(1)(d), and disclosure of that address were made in accordance with the provisions of NRS 481.063, then Schaefer may become the target of harassment. Schaefer's harm is speculative. The matter is not ripe for judicial determination.

The United States Supreme Court in addressing the issue of ripeness under the Declaratory Judgment Act applied the following test:

> Basically, the question in each case is whether . . . there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Lake Carriers' Association v. MacMullan*, 406 U.S. 498, 506, 92 S.Ct. 1749, 1755, 32 L.Ed.2d 257, ___ (1972).

A closer review of Schaefer's Complaint shows that it is based solely upon speculation and conjecture. Schaefer has failed to make a showing that the matter is ripe for adjudication. He is not entitled to summary judgment as a matter of law.

DECISION

WHEREAS good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment be denied; and

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's Opposition to Motion for Summary Judgment/Counter-Motion for Summary Judgment be granted.

Dated this 28 day of August, 1998.

/s/ [illegible]
DISTRICT JUDGE

Respectfully submitted,

FRANKIE SUE DEL PAPA
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By: /s/ [illegible]
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